

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

Nos. 22-01102

NOREEN WISCOVITCH RENTAS AS TRUSTEE FOR THE ESTATE OF JUAN
CARLOS BALCELLS GALLARETA

Appellant, v.

AMARILIS GONZALEZ GARCIA

Appellee.

**MOTION IN RESPONSE TO "INFORM APPELLANT BRIEF WAS
NOT SERVED AND REQUEST FOR REMEDIES"**

TO THE HONORABLE COURT:

COME NOW, NOREEN WISCOVITCH-RENTAS as Trustee for the Estate of Juan Carlos Balcells Gallareta (herein after "Trustee"), the above captioned Appellant, through the undersigned counsel very respectfully avers and prays as follows:

1. Although the term to file the appeal was initially set for May 6th, 2022, on April 28, 2022 the Trustee requested an extension of time to file the Appellant Brief until June 17, 2022.

Dkt. 5. The extension of time was granted by the Court. Dkt. 6.

2. On June 17, 2022, Appellant filed its brief on appeal. Dkt. 7. On that same day, counsel for the appellant sent a copy of the brief to the appellee to the address of record - PO BOX

3606595, San Juan, PR 00936-0695.

3. By inadvertence, Appellant neglected to file a certificate of service, but service was performed.

4. Appellee Amarilis González filed a motion on July 5, 2022 in which she claims not to have received a copy of the brief. Dkt. 8. In the Motion, Ms. González requests that the appeal be dismissed and/or to be granted thirty (30) days to file her response to the Appellant Brief.

5. Appellant notices that the P.O. Box included the signature does not match the address that Appellant has on record for the Appellee.

a. The Address of record is P.O. Box 3606595, San Juan, PR 00936-0695;

b. The Address on the signature is P.O. Box 984, Guaynabo, Puerto Rico, 00970.

6. Although the Trustee understands that this yet another attempt to delay the process, something that has been done continually throughout the litigation, it might be that a change in the address is the reason that the Appellee did not receive the notification.

7. Given the fact that Trustee neglected to file a Certificate of Service, that the Trustee asked for an extension of time first and that there appears to be a change in address, we are not opposed to serving the appellant brief once again and that

the Court grant an additional thirty (30) days to the Appellee to file her brief from the date of service as evidenced by a Certificate of Service.¹

8. But even if the Appellee were correct in that he brief was not served, which is vehemently denied, it has been held that dismissal for failing to timely file briefs, much less serve them, is proper only when bad faith, negligence or indifference is shown. None of those factors are present. In re Beverly Mfg. Corp., 778 F.2d 666, (11th Cir. 1985). At worst, Appellant notified the brief to an older address and had no knowledge of the new address so there is no bad faith, negligence or indifference.

9. In addition, appellee has not indicated that she has been prejudiced in any way by the alleged delay in service. Bostic v. Beneficial New Jersey, Inc. (In re Bostic), 2006 U.S. Dist. LEXIS 29705 (D.N.J. May 15, 2006)².

10. Notwithstanding, Appellee makes serious allegations against the Trustee and her counsel and should be mindful of Rule 11 of the Federal Rules of Civil Procedure and P.R. Professional Ethics Code Cannons #35 and #38 regarding such allegations. Dkt. 8.

11. Since Ms. González is a licensed attorney, she should be

¹ On this occasion, the Trustee will send the Brief to the address listed in the Motion filed by Appellee and use certified mail to ensure tracking of the package.

² Unreported.

mindful of the Rules and the P.R. Ethics Code and act accordingly. It is requested that the Court instruct the Appellant as to her obligations to the Court and that any future inflammatory allegations of the sort included in Paragraph 6 be met with sanctions for breach of Rule 11 and Cannons #35 and #38 of the P.R. Professional Ethics Code.

WHEREFORE, Trustee requests from this Honorable Court to take note of the above and (1) grant the Trustee three (3) days to re-serve the Appellant Brief on Ms. Amarilis Gonzalez and file a Certificate of Service with a copy of the Certified Mail receipt; (2) grant Appellee thirty (30) days from the Certificate of Service and (3) to Deny the request for dismissal filed by Ms. Amarilis González.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all parties in the case and to Amarilis Gonzalez by regular mail to: PO BOX 984 Guaynabo, PR 00970.

Respectfully submitted,

On this 6th day of July of 2022.

/s/ Rafael A. Gonzalez Valiente
USDC# 225209

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